IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE THIRTIETH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE BILAL NAZKI

and
THE HON'BLE MR JUSTICE S.ANANDA REDDY

WRIT PETITION NO : 14652 of 1997

Between:

1. Union of India, Rep By Its Secretary,
Department of Telecommunications, Sanchar Bhavan,
New Delhi-110001.
2. Chief General Manager, Telecommunications,
Andhra Pradesh Telecom.Circle, Hyderabad-500001.
3. General Manager, Telecom.District.
Suryalok Complex, Hyderabad-500001.

... PETITIONERS

AND

1 Secretary, Government of Andhra Pradesh,
Revenue Deptartment, Secretariat,
Hyderabad-500004.
2 The Commissioner, Commercial Taxes,
Andhra Pradesh, Hyderabad-500001.
3 Commercial Tax Officer, Commercial Taxes,
Nampally Circle, 158, APHB Complex,
M.K.Jahi Road, Hyderabad-500001
4 Commissioner of Transport,
Vth Floor, BRK Complex, Tank Bund Road,
Hyderabad-500029.

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to

issue a Writ in the nature of Mandamus or any other appropriate Writ or orders or directions;

i. Declaring the section 3 of A.P. Tax on entry of Motor Vehicles to local Areas Act 1996 including the 2nd proviso to section 3(1) so far as it restricted exemption to Central Government for defence purpose as void, illegal, arbitrary and ultravires the proviso of articles 285 of the Constitution.

ii. Declare section 20 of the AP Tax on entry of Motor Vehicle to local Area Act 1996 as void and unenforceable being repugnant to section 207 of the Motor Vehicle Act 1988 having regard to article 254 of the Constitution.

iii. Declare the AP Tax on entry of Motor Vehicle to local area Act 1996 as void and unenforceable as a whole for the legislative incompetency with respect to the subject matter and absence of presidential assent contemplated in article 304(b) of the Constitution and issue a consequential direction to the respondents not to collect entry tax under the AP Tax on entry of Motor Vehicle to Local Area Act 1996 on the Motor Vehicles owned and operated by the petitioners and pass such other order or orders as the Hon'ble Court may deem fit and proper in the circumstances of the case.

Counsel for the Petitioners :MR.R.S.MURTHY

Counsel for the Respondents : SPL GP FOR TAXES

The Court made the following :

ORDER : (per Hon'ble Sri Bilal Nazki, J)

In this Writ Petition, the petitioners have sought the following relief;

i. Declaring the section 3 of A.P. Tax on entry of Motor Vehicles to local Areas Act 1996 including the 2nd proviso to section 3(1) so far as it restricted exemption to Central Government for defence purpose as void, illegal, arbitrary and ultravires the proviso of articles 285 of the Constitution.

ii. Declare the section 20 of the AP Tax on entry of Motor Vehicle to local Area Act 1996 as void and unenforceable being

repugnant to section 207 of the Motor Vehicle Act 1988 having regard to article 254 of the Constitution.

iii. Declare the AP Tax on entry of Motor Vehicle to local area Act 1996 as void and unenforceable as a whole for the legislative incompetency with respect to the subject matter and absence of presidential assent contemplated in article 304(b) of the Constitution and issue a consequential direction to the respondents not to collect entry tax under the AP Tax on entry of Motor Vehicle to Local Area Act 1996 on the Motor Vehicles owned and operated by the petitioners and pass such other order or orders as the Hon'ble Court may deem fit and proper in the circumstances of the case.

The factual matrix in which this Writ Petition is filed, is that the petitioners purchased 19 vehicles, five Ambassadors, five Tata Sumo Jeeps and nine Matadors, from Hindustan Motors, Calcutta and Tata Electrical and Locomotives. These vehicles were received on 15.5.1997. The Regional Transport Officer, Ranga Reddy District was addressed on 07.07.1997 for grant of Registration and issuance of Certificate. The Registration Certificate was not given on the ground that the entry tax under the Andhra Pradesh Tax on Entry of Motor Vehicles Into Local Areas Act, 1996 (hereinafter referred to as 'the Act') was not paid. The levy of entry tax at the rate of 8% on the cost of the vehicle, is challenged by the petitioners.

Counter has been filed. We have heard learned Counsel for the parties.

It was argued that the vehicles belong to the Union of India and as such the State could not levy tax on those vehicles in terms of Article 285. Article 285 gives total exemption of property of the Union from State Taxation, but in such a case, it has to be seen as to whether the tax is on the property of the Union or any other event. Section 3 of the Act lays down;

> *"**3. Levy of Tax :** (1) Subject to the provisions of this Act, there shall be levided and collected tax on the entry of any motor vehicle into any local area for use or sale therein which is liable for registration in the State under the Motor Vehicles Act, 1988. The tax levied shall be at such rate or rates as may be fixed by the Government, by notification, on the purchase value of the motor*

vehicle but not exceeding the rates specified for motor vehicles in the First Schedule to the General Sales Tax Act, 1957 :

Provided that no tax shall be levied and collected in respect of any motor vehicle which was registered in any Union Territory or any other State under the provisions of the Motor Vehicles Act, 1988, prior to period of fifteen months or more from the date on which it is registered in the State :

Provided further that no tax shall be levied and collected in respect of any motor vehicle which is owned by Central Government and is used exclusively for the purposes relating to the Defence of India.

(2) The tax shall be payable by the importer in such manner and within such time as may be prescribed.

(3) Where the motor vehicle is taken delivery of, on its entry into a local area or brought into a local area by a person other than importer, the importer who takes delivery of the motor vehicle from such person shall be deemed to have brought or caused to have brought the motor vehicle into the local area."

From a bare perusal of this charging section, it becomes clear that the taxing event is the entry of the vehicle into the territory of Andhra Pradesh. As such, by this Act, no tax is imposed on the vehicles owned by Union of India, but the tax is imposed on entry of the vehicle into the territory of Andhra Pradesh. In the famous judgment of *Sea Customs Act, 1878, S. 20(2)*, which till date remains the law of land and was a decision by nine Judges of the Hon'ble Supreme Court, it was laid down;

"This will show that the taxable event in the case of duties of excise is the manufacture of goods and the duty is not directly on the goods but on the manufacture thereof. We may in this connection contrast sales-tax which is also imposed with reference to goods sold, where the taxable event is the act of sale. Therefore though both excise duty and sales-tax are levied with reference to goods, the two are very different imposts; in one case

the imposition is on the act of manufacture or production while in the other it is on the act of sale. In neither case therefore can it be said that the excise duty or sales tax is a tax directly on the goods for in that event they will really become the same tax. It would thus appear that duties of excise partake of the nature of indirect taxes as known to standard works on economics and are to be distinguished from direct taxes like taxes on property and income."

In view of this judgment and in view of the Act that the taxing event is not the vehicle itself but the taxing event is the entry of the vehicle into the State of Andhra Pradesh, the contention of Mr.Murthy also cannot be accepted. Further, it is not even the company, but it is a corporation.

Secondly Mr.Murthy submitted that the Act is contrary to the provisions of Motor Vehicles Act, 1988. Particularly he made a reference to Section 20 of the Act and Section 207 of the Motor Vehicles Act, 1988. Both these Acts operate in two different fields and Section 20 of the Act gives a remedy to the authorities in case of violation under the Act whereas Section 207 of the Motor Vehicles Act gives remedy to the authorities if there is a violation under the Motor Vehicles Act. It may be also pointed out that in terms of Section 60 of the Motor Vehicles Act, Central Government authorities are not exempt from getting vehicles registered and from payment of the registration fee unless such authority has the Central Government may, by notification in the official Gazette, specify for the purpose of registration of vehicles belonging to the Central Government and are used for the purposes relating to the defence of the Country and are unconnected with any commercial enterprise. That means that without a notification from the Central Government, even the Central Government vehicles are not exempt from registration under the Motor Vehicles Act, 1988. Mr.Murthy while arguing the matter, also stated that while purchasing the vehicles from Culcatta, the petitioners had paid Central Sales Tax, which makes it abundantly clear that the vehicles owned by the petitioners were not exempt from Sales Tax and were not engaged exclusively in defence of India.

For these reasons, we do not find merit in the Writ Petition, which is accordingly dismissed. No costs.

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(BILAL NAZKI, J)

30th September, 2004.

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(S.ANANDA REDDY, J)

ajr

To

1. The Secretary, Department of Telecommunications, Sanchar Bhavan, New Delhi-110001.

2. The Chief General Manager, Telecommunications, Andhra Pradesh Telecom.Circle, Hyderabad-500001.

3. The General Manager, Telecom.District.

Suryalok Complex, Hyderabad-500001.

4. The Secretary, Revenue Department, Govt. of Andhra Pradesh Secretariat,

Hyderabad – 500 004.

5. The Commissioner, Commercial Taxes, Andhra Pradesh,
Hyderabad – 500 001.

6. The Commercial Tax Officer, Commercial Taxes, Nampally Circle 158,
APHB Complex, M.K.Jahi Road, Hyderabad.

7. The Commissioner of Transport, V floor, BRK Complex, Tank Bund Road, Hyderabad – 500 029.

8. Two C.Cs. to the Spl. GP for Taxes, High Court buildings, Hyderabad (O.U.T)

9. Two C.D. copies.